

Addameer Prisoners' Support and Human Rights Association
Al-Haq
Defense for Children International – Palestine Section
Huryyat-Center for Defense of Liberties and Civil Rights
Jerusalem Center for Legal Aid and Human Rights
BADIL Resource Center for Palestinian Residency and
Refugee Rights



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Joint Statement on Israeli Demolitions of Palestinian Structures inside Area C, and the Perpetration of Forcible Transfer of Palestinian Civilians

Issued by the Palestinian Human Rights Organizations Council

August 20th, 2015

We, the undersigned members of the Palestinian Human Rights Organizations Council (PHROC) condemn in the strongest possible terms Israel's recent spate of demolition of Palestinian structures in and adjacent to the area known by the international community as 'E1', in the occupied West Bank, and highlight that these demolitions represent material acts upon which a finding of forcible transfer can be based. Accordingly, these acts constitute a grave breach of the Fourth Geneva Convention as well as war crimes and crimes against humanity under international criminal law, while violating numerous fundamental human rights

Since August 5th, 2015, Israeli forces have demolished a total of 57 Palestinian structures across the villages of Khan Al Ahmar, Bir al Maskoob, Wadi Sneisil, Al Zaim and Fasayel el Wusta. Residential dwellings were targeted, leaving a total of 167 inhabitants (including 101 children),¹ homeless and without shelter during the hottest time of the year. Animal shelters were also destroyed, along with other structures essential to the maintenance of the communities' existence, including toilets and external kitchens.

Israeli demolition orders hang over the vast majority of Palestinian Bedouin structures in the 'E1' area, reducing the lives of affected individuals and communities to one of uncertainty and fear. When executed, demolitions are an utterly devastating experience, with recent studies concluding that the average adjusted damage (factoring in – *inter alia* - physical damage to property, psychosocial and legal costs) inflicted upon each affected Palestinian household was NIS 680,648² (US\$ 175,244³).

Yet, the threat of demolitions represents just one element operating within what Israeli policy has rendered an almost impossible living environment. Only half of the Palestinian Bedouin communities in and around E1 have been connected to the public water network, whilst none have been connected to the public electricity network. Access to crucial

¹ B'tselem, August 18th, 2015. 40 Degrees in the Shade: Civil Administration destroys Homes of 48 People in Jordan Valley, including 31 Minors. Available at: http://www.btselem.org/planning_and_building/20150818_fasayil_demolitions

² Hever, April 2015. *The Economic Impact of Displacement: Analysis of the Economic Damage caused to Palestinian households as a Result of Displacement by Israeli Authorities*. Norwegian Refugee Council.

³ Conversion accurate as of 20.08.15

grazing land is made increasingly problematic by the route of the Annexation Wall and the expanding boundaries of settlements,⁴ and this expansion also brings with it harassment and threats of violence from Israeli settlers.

This scenario is one built upon an Israeli-implemented legal system geared towards the protection of its own strategic interests. Local planning legislation is subject to cynical interpretation or widespread change through a web of Military Orders – introduced in direct contravention of International Humanitarian Law – which strip Palestinian representation from planning and zoning policy, whilst key procedural safeguards intended to protect communities from forced displacement are disregarded by Israel or are entirely absent.

The cumulative result is a clear breach of the right to adequate housing, enshrined within the International Covenant on Economic, Social and Cultural Rights (to which Israel is a signatory), but in its artificial creation of an environment through which the resident occupied Palestinian populace is coerced to leave, Israel is also perpetrating international crimes.

In the context of international armed conflict, under Article 49 of the *Fourth Geneva Convention*⁵ and Rule 129 of Customary International Law,⁶ an occupying power is strictly prohibited from forcibly transferring the civilian population of an occupied territory. This provision is robust and unequivocal, prohibiting individual or mass forcible transfer regardless of motive, with contravention constituting a grave breach under Article 147 of the *Fourth Geneva Convention*, and thus also a war crime under the *Rome Statute* of the International Criminal Court,⁷ as well as being addressed more widely in the latter under Article 8, which prohibits:

The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;⁸

The forcible dimension in the term 'forcible displacement' is interpreted broadly, and:

[...] is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.⁹

⁴ OCHA (oPt), 2014. *Area C Vulnerability Profile*. Available at: http://www.ochaopt.org/documents/ocha_opt_fact_sheet_5_3_2014_en_.pdf

⁵ International Committee of the Red Cross (ICRC), "Fourth Geneva Convention", Article 49.

⁶ International Committee of the Red Cross (ICRC), "Customary IHL - Rule 129. The Act of Displacement," http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter38_rule129.

⁷ International Criminal Court, Rome Statute of the International Criminal Court, 1998, Article 8(2)(a)(vii)

⁸ International Criminal Court, Rome Statute of the International Criminal Court, 1998, Article 8(2)(b)(viii)

⁹ The Rome Statute Elements of Crimes, Article 6(e)

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In addition, and of direct relevance to Israeli practices towards Palestinian Bedouin present in Area C, Article 147 of the Fourth Geneva Convention also lists “the extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” as a grave breach of the Fourth Geneva Convention.

In its destruction of Palestinian homes and essential infrastructure, as well as through additional, structural acts which produce a demonstrably coercive living environment, Israel is perpetrating the international crime of forcible transfer; a grave breach of the Fourth Geneva Convention and a war crime.

Moreover, under the Rome Statute - to which the State of Palestine acceded earlier this year - when committed as part of a widespread or systematic attack against a civilian population, forcible transfer also constitutes a crime against humanity.¹⁰ The coordinated nature and timings of these demolitions and other acts which force Palestinians from the areas in question clearly satisfies this requirement. In addition, these demolitions and other coercive acts must be viewed in the context of the Israeli government’s ‘Nuweima Plan’, which would see all remaining Palestinian Bedouin communities in the central West Bank forcibly transferred to three urban townships: the first at the al Jabal West site, adjacent to Al Eizarieh, and the two largest - Nuweimeh North and Armonot Hashmonaim, with a planned combined capacity of 12,500 individuals – to be built in the Jordan Valley. Such a policy can comfortably be said to be both widespread *and* systematic in character.

The ultimate purpose of this Israeli policy is starkly laid out in plan 420/4; the ‘E1 master plan’ which received approval in 1999. This master plan is split into separate detailed plans which, collectively, outline the intended construction of almost 3700 settler housing units, and over 2000 hotel rooms. Israel’s then-Minister for Construction and Housing, Uri Ariel – himself a resident of a settlement inside the Adummin Bloc –stated on record that building inside E1 is both an Israeli “right and obligation”,¹¹ whilst the office of Prime Minister Benjamin Netanyahu responded to international criticism to the E1 plans by declaring that construction here represented an Israeli “vital interest”.¹² This “vital interest” refers to the merging of Ma’ale Adummin and Jerusalem, resulting in the latter becoming surrounded by a bank of Israeli Jewish settlements and effectively severing the West Bank in two.

It is clear, then, that Israel intends to follow the mass forcible transfer of Palestinians with vast settlement construction and expansion; creating ‘facts on the ground’ and seeking to exercise permanent sovereignty over occupied Palestinian land, a practice wholly consistent with definitions of ‘colonialism’ adopted by UN General Assembly resolutions.¹³ To

¹⁰ International Criminal Court, Rome Statute of the International Criminal Court, 1998. Article 7(d)

¹¹ Hoffman, Apr 2013. *Livni’s Party Angered by E1 Building Plans*. Available at: <http://www.jpost.com/Diplomacy-and-Politics/Livnis-party-angered-by-E1-building-plans-310095>

¹² BBC, Dec 2012. *Israeli Settlements: Netanyahu defies outcry over E1*. Available at: <http://www.bbc.com/news/world-middle-east-20585706>

¹³ For further analysis on the application of the legal framework of colonialism to the forced displacement of Palestinian Bedouin communities, see BADIL, 2015. *Israel’s Forcible Transfer of Palestinian Bedouin: Forced Displacement as a Pillar of Colonialism and Apartheid*. Available at: <http://www.badil.org/phocadownloadpap/badil-new/legal-advocacy/un-submissions/special->

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this end, Israel has made significant progress, and the hesitancy of the international community – spanning member states, regional bodies, UN organs and international non-governmental organizations – in applying appropriate, legally-rooted terminology serves only to assist this cycle of forcible population transfer.

In identifying the presence of Israeli-perpetrated forcible transfer inside the occupied Palestinian territory (oPt), we not only do justice to those Palestinians who suffer from this devastating crime, but also open up channels of tangible redress. Forcible transfer is a crime which confers legal obligations on third party states, with Common Article 1 of the Fourth Geneva Convention stipulating:

“The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances”

ICRC commentary develops this provision further, concluding that Common Article 1 is “*generally interpreted as enunciating a responsibility on third States not involved [...] to ensure respect for international humanitarian law by the parties to an armed conflict by means of positive action. Third States have a responsibility, therefore, to take appropriate steps — unilaterally or collectively — against parties to a conflict who are violating international humanitarian law, in particular to intervene with states or armed groups over which they might have some influence to stop the violations.*”¹⁴

Furthermore, as a grave breach of the Fourth Geneva Convention and thus one of the most heinous classifications of war crime, High Contracting Parties are obligated to search for individuals alleged to have committed – or to have ordered to be committed – forcible transfer, and to bring such persons before a domestic court or, alternatively, to hand such persons over to another High Contracting Party so that they may be brought before a court of law.¹⁵

Accordingly, we, the undersigned members of PHROC:

- I. Call upon third party states, regional bodies, UN organs and international non-governmental organizations to apply appropriate legal terminology to the present day reality in the oPt; particularly, identifying that Israel’s recent spate of demolitions of Palestinian structures in Area C, and the resulting displacement, constitutes the international crime of forcible transfer;

procedures/Submission-for-the-Special-Rapporteur-on%20the-Situation-of-Human-Rights-in%20the-Palestinian-Territories-Occupied-since-1967(july2015).pdf

¹⁴ ICRC. *Improving Compliance with International Humanitarian Law*, pg.2. Available at:

https://www.icrc.org/eng/assets/files/other/improving_compliance_with_international_humanitarian_law.pdf

¹⁵ International Committee of the Red Cross (ICRC), “Fourth Geneva Convention”, Article 146

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- II. Call upon High Contracting Parties, as a matter of great urgency, to honor their obligation under Common Article 1 of the Fourth Geneva Convention to take all available measures to halt Israel's perpetration of forcible transfer of Palestinians inside the oPt;
- III. Call upon High Contracting Parties to honor their obligation under Article 146 of the Fourth Geneva Convention to search for individuals present on their respective territory who have materially participated in the forcible transfer of Palestinians, and to either bring proceedings against such persons in their national courts under the principle of universal jurisdiction, or to hand over such persons to a fellow High Contracting Party so that they may be brought before a court of law.
- IV. Draw to the attention of the International Criminal Court Israel's continuing practices of forcible transfer inside the oPt, and highlights the *prima facie* evidence that such practices not only satisfy the required elements of war crimes under the Rome Statute, but also those of a crime against humanity.